IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

COMPANY PEITION NO.116 OF 2007
WITH
COMPANY APPLICATION NO.25 OF 2006

Kishco Limited. ....Petitioner.

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Mr. Hemant Sethi i/b. Hemenat Sethi & Co.for the Petitioner.
Mr.C. J. Joy with Ms.Bharti Mahant and Mr.G. C. Mishra for the Regional Director.
Mrs. K.V. Gautam, Dy. Official Liquidator present.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 27, 2007.

P.C.:

The sanction of the Court is sought to a Scheme of Arrangement between the Petitioner and equity shareholders. The expression “eligible equity shareholder” and the “promoter shareholder” are defined in clauses 1.7 and 1.8 of the scheme as follows:

> “1.7 'Eligible Equity Shareholder' means a shareholder, other than Promoter Shareholders, on the Record Date.
>
> 1.8 'Promoter Shareholders' means the shareholders holding in aggregate 10,62,300 Equity Shares, representing 57.04% Equity Capuital as on 30th September, 2006 and declared as Promoter Shareholders to the OTC Exchange of India from time to

time and as on Record Date."

Clause 2.7 of the proposed scheme provides that the total issued subscribed and paid up equity share capital of the Company is 18,62,400. Out of this, 10,62,300 equity shares are held by promoter shareholders, while the balance of 8,00,100 shares are held by outsiders who are treated as 'eligible equity shareholders'. The value of each share is Rs.5/-. The object of the scheme is referred to in clause 5 thus:

> "5.1 The Company has a high number of Equity Shareholders, majority of them holding a small quantity of Equity shares. The Equity Shares of the Company have been listed on OTC Exchange of India (OTCEI) from June 30, 1994. The last trade in the Company's Equity Shares was carried out on OTCEI on March 31, 2000 at price of Rs.4.00/- . Since April 01, 2000 the Equity Shares of the Company were not at all traded on the OTCEI. The market quotations for buy and sell are also not readily available. The investments made by these shareholders are locked up and they find it difficult to dispose off their shareholding.
>
> This has put the Equity Shareholders in lot of hardship and inconvenience as there is no liquidity/tradability to their shareholding. As an investor friendly gesture, the Company wants to provide an exit opportunity to the Eligible Equity Shareholders.
>
> In order to provide an exit opportunity, to all such Eligible Equity Shareholders, the Company proposes to purchase upto 8,00,100 Equity Shares representing 42.96% of the paid up Equity Share capital of the company at a price of Rs.10/- per Equity Shares of

> Rs.5/- each. The price will be paid by issue of Redeemable Preference Shares or by payment of Share Consideration amount at the option of the Eligible Equity Shareholders. This will provide an exit opportunity to all such Equity Shareholders at a fair value for their shareholding in the Company."

Under the proposed scheme, an option is given to the existing shareholders to receive 8% redeemable preference shares of Rs.10/- each in lieu of every one equity share held. Those eligible equity shareholders who exercise the option to receive 8% redeemable preference shares within a period of 21 days would be entitled to the allotment of such shares. In respect of the others, the scheme provides that the shareholders would be paid a consideration of Rs.10/- per share.

A meeting of eligible equity shareholders is stated to have been convened in pursuance of the directions of the Court on 22nd February 2007. 51 members attended in person or proxy of which two votes were held to be invalid. The resolution approving the scheme and the Special Resolution as required under Section 100 of the Companies' Act, 1956 confirming the reduction of the equity share capital were approved by all the equity shareholders who cast valid votes. A separate meeting of promoter equity

shareholders was held at which a requisite resolution was passed.

OTC Exchange of India has granted an in principle, approval by a letter dated 24th December 2006. The Regional Director has in an affidavit filed in these proceedings, dated 25th April 2007, raised two objections in para 6 thereof which are as follows :

> "6. The Deponent further submits that :-
>
> (a) The Petitioner company may be directed to submit proof of filing of form No.23 with Registrar of Companies, in respect of special resolution passed u/s 100 to 1004 for reduction of share capital of the petitioner company.
>
> (b) The section 77A of the Companies' Act, 1956 provides for separate procedure for buy back of shares. Even though the petitioner company opt for the procedure u/s.391 and 392 read with section 100 of the Companies' Act, 1956."

In so far as the first objection is concerned, Counsel appearing on behalf of the Petitioner states that a special resolution together with Form 23 shall be lodged with the Registrar of Companies immediately after the passing of this order. Consequently, the first objection does not survive. In so far as the second objection is concerned, the issue is covered by a judgment of a Division Bench of this Court in **Securities Exchange Board of India vs. Sterlite**

India Ltd.[1] Though an appeal instituted against the judgment has been admitted by the Supreme Court, the Court has been informed that there is no stay of the operation of the judgment. A similar objection raised by the Regional Director has consequently been rejected by judgments of Learned Single Judges dated 23rd December 2001 (CP 801/01), 9th February 2007 (CP 284/06) and 24th June 2005 (CP 212/04). In the circumstances, the second objection would have to be rejected having regard to the judgment of the Division Bench in **Sterlite** (supra).

Since all requisitions have been complied with and duly fulfilled and there is no other objection to the scheme, the Company Petition would have to be allowed. It would be necessary to record that save for the objections in para 6 of the reply, the Regional Director has stated that the scheme is not prejudicial to the interest of the public or the interest of the shareholders or creditors.

The Company Petition is accordingly made absolute in terms of prayer clauses (a) to (c).

1 2003 (113) Com Cases 273

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